

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
Comtec Communications, Inc.)
Request for Waiver of Automatic Cancellation of)
900 MHz Specialized Mobile Radio Service)
Licenses)

ORDER

Adopted: June 6, 2008

Released: June 6, 2008

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request for waiver of the automatic cancellation of three 900 MHz Specialized Mobile Radio ("SMR") licenses (the "Licenses") filed on behalf of Comtec Communications, Inc., d/b/a SkyTec P.R., Inc. ("SkyTec").

2. We find that the Waiver Request does not adequately explain SkyTec P.R., Inc.'s relationship to Comtec, the licensee of record when the Licenses canceled, and that, based on the information before us, it is unclear whether SkyTec is the same corporate entity as Comtec.

1 Letter from Bonnie K. Arthur, Esq., to John Muleta, Chief, Wireless Telecommunications Bureau, and Marlene H. Dortch, Secretary, Federal Communications Commission, filed April 9, 2003 ("Waiver Request").

2 47 C.F.R. § 1.2110(e)(4)(iii) (1997). The rule providing for the automatic cancellation of licenses upon the default of the licensee on installment payments is now codified at 47 C.F.R. § 1.2110(g)(4)(iv).

unauthorized transfer of control of the Licenses prior to their cancellation as well as other serious violations of the Commission's rules, we find that we have insufficient information to consider the merits of any request for a waiver of the automatic cancellation of the Licenses. We therefore deny the Waiver Request without considering the merits of the arguments presented therein.

3. In light of our denial of the Waiver Request, we dismiss as moot Comtec's application for renewal of the Licenses and its request for waiver of the requirement of filing renewal applications electronically.³ The Waiver Request states that Comtec has continued to operate on the Licenses subsequent to their automatic cancellation. To the extent Comtec has done so, it has violated the Commission's rules. Nevertheless, in order to avoid disruptions in service to any customers Comtec may have as those customers make arrangements with other service providers, we grant Comtec Special Temporary Authority ("STA") to provide service using the Licenses for 180 days from the release of this Order consistent with the conditions described below.⁴

II. BACKGROUND

A. The Commission's Installment Payment Program

4. When the Commission first adopted competitive bidding rules in 1994, it established an installment payment program under which qualified small businesses that won licenses in certain services were allowed to pay their winning bids in quarterly installments over the initial term of the license.⁵ In deciding to offer installment payment plans, the Commission reasoned that in appropriate circumstances such plans would, by reducing the amount of private financing small entities needed in advance of auctions, help to provide opportunities for small businesses to participate in the provision of spectrum-based services.⁶ Licensees paying in installments were generally allowed to pay only interest in the early years of the license term.⁷ When in 1997 the Commission discontinued the use of installment payments

³ Comtec filed renewal applications for the Licenses manually on July 14, 2006. The Commission's rules require license renewal applications to be filed electronically through the Universal Licensing System ("ULS"). 47 C.F.R. § 1.913(b). Because the Licenses had automatically canceled, however, Comtec could not file its renewal applications electronically through ULS. Comtec's request for waiver of the electronic filing requirement was submitted as an attachment to its renewal applications. The manual applications were uploaded into ULS and assigned FCC file numbers, ULS File Nos. 0002690264, 0002690265, and 0002690266, but the Bureau never issued a public notice accepting the applications for filing.

⁴ On August 12, 2003, Comtec Communications, Inc., d/b/a SkyTrackers, Inc., requested an STA to continue providing service on the Licenses until action was taken on the Waiver Request. Letter from Bonnie K. Arthur, Esq., to Margaret Wiener, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, filed August 12, 2003. We note that, as is the case with SkyTec P.R., Inc., the relationship of Comtec to SkyTrackers, Inc., is unclear.

⁵ Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2348, 2389-91 ¶¶ 231-40 (1994). The first Commission auction for which installment payments were available was Auction No. 2 (218-219 MHz Service), which concluded on July 29, 1994.

⁶ *Id.* at 2389-90 ¶ 233. The goal of providing opportunities for small businesses to participate in the provision of spectrum-based services is set forth at 47 U.S.C. § 309(j)(3)(B), (4)(D).

⁷ See 47 C.F.R. § 1.2110(e)(3)(iii), (iv) (1994).

for future auctions,⁸ it allowed entities that were already paying for licenses in installments to continue doing so.⁹

5. Under the installment payment rules in effect at the time Comtec failed to submit the payments that were due, licensees were permitted 90 days after a payment due date to either submit the payment or file a grace period request with the Commission.¹⁰ Any licensee who failed to do so was in default.¹¹ If the licensee defaulted, the license canceled automatically and the Commission instituted debt collection procedures.¹²

⁸ The Commission discontinued the use of installment payments based on its findings that (1) installment payments are not necessary to ensure meaningful opportunities for small businesses to participate successfully in auctions; (2) the Commission must consider all of the objectives of section 309(j) of the Communications Act, including the development and rapid deployment of new services for the benefit of the public; (3) filings for bankruptcy by entities unable to pay their winning bids may result in delays in the deployment of service; and (4) requiring the payment of bids in full within a short time after the close of auctions ensures greater financial accountability from applicants. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Report and Order and Second Further Notice of Proposed Rulemaking*, 13 FCC Rcd 374, 397-98 ¶¶ 38-39 (1998) (“*Part 1 Third Report and Order*”). The Commission affirmed this decision in 2000. Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Order on Reconsideration of the Third Report and Order, Fifth Report and Order, and Fourth Further Notice of Proposed Rule Making*, 15 FCC Rcd 15,293, 15,322 ¶ 55 (2000) (“*Part 1 Reconsideration of Third Report and Order*”). The last Commission auction for which installment payments were available was Auction No. 11 (broadband PCS F block), which ended on January 14, 1997.

⁹ *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106.

¹⁰ 47 C.F.R. § 1.2110(e)(4)(i) & (ii) (1997). Licensees were permitted to request a grace period of 90 to 180 days.

¹¹ 47 C.F.R. § 1.2110(e)(4)(i), (ii), & (iii) (1997).

¹² 47 C.F.R. § 1.2110(e)(4)(iii) (1997). In 1997, the Commission amended its installment payment rules to provide licensees with an automatic grace period. Under these rules, which became effective on March 16, 1998, if a licensee did not make full and timely payment of an installment, it was automatically granted a 90-day period during which it was allowed to pay the installment along with a 5 percent late fee. If it did not submit the missed installment payment and the 5 percent late fee before the expiration of this 90-day period, the licensee was automatically granted a second 90-day period during which it could remit payment along with an additional late fee equal to 10 percent of the missed payment. A licensee's failure to make payment, including the associated late fees, by the end of the second 90-day period placed it in default. 47 C.F.R. § 1.2110(f)(4)(i) (1998); *Part 1 Third Report and Order*, 13 FCC Rcd at 436 ¶ 106. In 2000, the Commission simplified these rules by replacing the two 90-day grace periods with two quarterly grace periods. 47 C.F.R. § 1.2110(g)(4)(iv) (2000). This change aligned the schedule for late payments with the quarterly schedule of regular installment payments. *Part 1 Reconsideration of Third Report and Order*, 15 FCC Rcd at 15,310 ¶ 28.

Notwithstanding these amendments, certain features of the Commission's installment payment rules have remained the same since they were first adopted in 1994. Thus, the rules have always conditioned the grant of licenses upon the full and timely performance of licensees' payment obligations and have provided that, upon a licensee's default, the license cancels automatically and the Commission institutes debt collection procedures. *See, e.g.*, 47 C.F.R. § 1.2110(e)(4) (1994) and 47 C.F.R. § 1.2110(f)(4) (1998). *See also* Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, *Third Order on Reconsideration of the Third Report and Order*, 19 FCC Rcd 2551 (2004). In that Order, which addressed the inapplicability of 47 C.F.R. § 1.2104 of the Commission's rules to installment payment defaults, the Commission discussed its 1997 decision not to deviate from its license-cancellation-plus-debt-collection rule for installment payment defaults and explained the reasonableness of this decision. Noting that automatic license cancellation is not unique to defaults on installment payments (licenses terminate automatically, for example, when licensees fail to build out in compliance with the Commission's rules, whether they are paying their winning bids in installments or have paid them in full in a lump (continued....))

B. Comtec's Acquisition of the Licenses and Its Default on Its Installment Payments

6. Comtec was the winning bidder for the Licenses in Auction No. 7.¹³ As a small business under Section 90.814(b)(1)(i) of the Commission's rules,¹⁴ Comtec was eligible to, and elected to, pay for the Licenses over their ten-year term using the installment payment plan available to small businesses that won licenses in Auction No. 7.¹⁵ On August 16, 1996, the Bureau granted the Licenses to Comtec conditioned upon Comtec's full and timely performance of its payment obligations.¹⁶

7. Comtec was required to begin making quarterly installment payments on the Licenses on November 30, 1996. As discussed above, the Commission's rules at that time allowed licensees 90 days after an installment payment due date to either submit the required payment or file a grace period request. Comtec submitted its first three installment payments, which were due in November 1996, February 1997, and May 1997, within this 90-day period. However, the Commission did not receive the payment due in August 1997, nor did Comtec file a grace period request, within 90 days of the due date. Pursuant to the Commission's rules, the Licenses therefore automatically canceled on December 2, 1997, and Comtec became subject to debt collection procedures.¹⁷ Comtec began making payments on its outstanding debt in April 1998 and eventually paid the debt in full on August 26, 2006.¹⁸

8. On April 9, 2003, SkyTec filed the Waiver Request. The Waiver Request acknowledges that Comtec failed to make the installment payment due in August 1997 before the end of the 90-day period permitted under the Commission's rules.¹⁹ The Waiver Request asserts that although the Commission was not obligated to notify Comtec of the missed payment, it proceeded as if the Licenses were active after the missed deadline.²⁰ The Waiver Request further argues that, because the Commission treated the Licenses as active following Comtec's default and accepted Comtec's post-default payments, a

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sum), the Commission explained that its rules are designed to encourage entities that cannot meet their financial obligations to exit the auction process sooner rather than later in order to avoid delays in licensing spectrum to entities that are able to provide service to the public. Thus, the consequence of defaulting after the close of an auction is more severe than the consequence of withdrawing a high bid during an auction, when a new high bidder can still emerge. Similarly, the consequence of a post-licensing default, such as an installment payment default or a failure to meet construction or service requirements, is more severe than the consequence of a pre-licensing default because the former could adversely affect service to the public much longer than the latter. *Id.* at 2561-62 ¶¶ 29-31.

¹³ FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas, *Public Notice*, 11 FCC Rcd 18,599 (1996).

¹⁴ 47 C.F.R. § 90.814(b)(1)(i) (1995).

¹⁵ *Id.* § 90.812 (1995).

¹⁶ FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses, *Public Notice*, 11 FCC Rcd 9451 (1996). *See also* 47 C.F.R. § 90.812(a) (1995).

¹⁷ 47 C.F.R. §§ 1.2110(e)(4)(iii) (1997).

¹⁸ After the April 1998 payment, Comtec made payments to the Commission in January 1999, February 2001, May 2001, and July 2001. It then made quarterly payments to the Commission until the debt was paid in full on August 26, 2006.

¹⁹ Waiver Request at 1.

²⁰ *Id.* at 1-2.

constructive waiver of the installment payment deadline occurred.²¹

C. Comtec's Submission of Inconsistent Ownership Information and the Bureau's Letter of Inquiry

9. Despite the cancellation of the Licenses, Comtec manually filed renewal applications for the Licenses in July 2006, one month prior to what would have been the end of the original ten-year license terms.²² In conjunction with its renewal applications, Comtec filed an FCC Form 602 on September 7, 2006.²³ The information Comtec provided on the form was deemed insufficient, and Comtec refiled FCC Form 602 on September 20, 2006.²⁴

10. The ownership information Comtec reported in its FCC Form 602 in September 2006 is different from the ownership information it submitted in the FCC Form 175 short-form application it filed to participate in Auction No. 7.²⁵ In its FCC Form 175, Comtec identified Jose Barreda as the sole owner and president of Comtec and stated that no other individuals or entities had an ownership interest in Comtec.²⁶ The FCC Form 175 further indicated that Comtec did not have any affiliates pursuant to Section 90.815(a)(1) of the Commission's rules.²⁷ In contrast, Comtec's FCC Form 602 indicates that Henry L. Barreda and Miguel J. Carbonell each holds a 50 percent ownership interest in Comtec.²⁸

11. The differences in the ownership information reported in these forms, in addition to the filing of the Waiver Request by a corporate entity that appeared to be different from Comtec, raised serious questions regarding whether Comtec had effected an unauthorized transfer of control of the Licenses prior to their automatic cancellation. The differences in the ownership information in Comtec's FCC Form 175 and FCC Form 602 also raised the possibility that Comtec had misrepresented its ownership

²¹ *Id.* at 2, 4.

²² *See supra* note 3.

²³ ULS File No. 0002743705. FCC Form 602 is used by license applicants and licensees in auctionable services to provide ownership information to the Commission and keep that information up to date. 47 C.F.R. §§ 1.913(a)(2), 1.919(a). This form must be filed or updated to renew an existing license if a current FCC Form 602 is not on file with the Commission. *Id.* § 1.919(b)(2). The Commission considers the ownership data pertaining to the filer in determining whether the public interest would be served by a grant of the requested authorization. The form requires the provision of information regarding the identity of the real party or parties in interest of the filer and additional information required by Section 1.2112(a) of the Commission's rules regarding: (1) persons or entities holding a 10 percent or greater direct or indirect ownership interest in the filer; (2) all limited partners whose interest in the filer is 10 percent or greater; (3) all general partners in any general partnership in the filer's chain of ownership; and (4) the members of any limited liability corporation whose interest in the filer is 10 percent or greater. *Id.* § 1.2112(a)(4).

²⁴ ULS File No. 0002757999.

²⁵ All applicants for Commission auctions are required to file FCC Form 175, and information regarding the ownership of the applicant must be provided on this form. *See* 47 C.F.R. §§ 1.2105(a), 90.806, 90.815 (1995). The Commission's rules also provide that applicants are responsible for the continuing accuracy and completeness of information furnished in a pending application and applicants must maintain up-to-date ownership information on file with the Commission. *See* 47 C.F.R. § 1.65.

²⁶ Comtec Communications, Inc., FCC Form 175, File No. 0660498645.

²⁷ 47 C.F.R. § 90.815(a)(1) (1995).

²⁸ ULS File No. 0002743705.

structure in its FCC Form 175 in order to qualify for designated entity status, which not only allowed it to pay for the Licenses in installments but also made it eligible for bidding credits.²⁹ On April 18, 2007, the Bureau therefore sent the LOI to Comtec, in which, pursuant to 47 U.S.C. §§ 154(i), 154(j), 308(b), and 403, we directed Comtec, the licensee of record at the time of the automatic cancellation of the Licenses, to provide certain information and documents within 30 calendar days, i.e., by May 18, 2007.³⁰ Comtec was required to provide information and documents relating to its corporate composition, any changes to its ownership or control since its application to participate in Auction No. 7, and its relationship to SkyTec P.R., Inc. Comtec did not respond to the LOI.

III. DISCUSSION

12. To obtain a waiver of the automatic cancellation rule, Comtec would have to show either that: (i) the underlying purpose of the rule would not be served, or would be frustrated, by its application in the instant case, and a grant of the requested waiver would be in the public interest; or (ii) the unique facts and circumstances of the instant case render application of the rule inequitable, unduly burdensome or otherwise contrary to the public interest, or Comtec has no reasonable alternative.³¹ In order for us to consider any arguments Comtec might make to meet this standard, which requires us to find that a waiver of the rule would be in the public interest, we would need to have complete and accurate information regarding Comtec's ownership structure and would need to be satisfied that Comtec is qualified to be a Commission licensee. Comtec has not provided us with sufficient information to make such a determination and we therefore deny the Waiver Request.

13. The Waiver Request does not explain SkyTec's relationship to Comtec. It states merely that Comtec "d/b/a SkyTec P.R., Inc." requests a waiver of the automatic cancellation of the Licenses. As indicated above, the present record includes evidence of Comtec's having either transferred control of the Licenses without Commission authorization or misrepresented its ownership structure in its Auction No. 7 short-form application, or both. The Waiver Request's indication that Comtec is doing business as SkyTec P.R., Inc., is inadequate to explain this evidence and therefore does not resolve the questions we have regarding whether Comtec committed one or more serious violations of the Communications Act of 1934, as amended (the "Act"), and the Commission's rules. In light of Comtec's failure to respond to our LOI, in which we directed Comtec to resolve these issues by explaining its ownership structure since the filing of its Auction No. 7 short-form application and its relationship to SkyTec P.R., Inc., we are unable

²⁹ Designated entities are small businesses, businesses owned by members of minority groups and/or women, and rural telephone companies. 47 C.F.R. § 1.2110(a). The Commission defines small businesses in its competitive bidding rules for each service in which it offers preferences to such entities. Bidders that qualified as small businesses for Auction No. 7 were eligible for bidding credits and allowed to participate in the Commission's installment payment program. 47 C.F.R. §§ 90.810, 90.812, 90.814 (1995). There were two separate small business categories, each eligible for different bidding credit amounts and installment payment terms: (1) entities that, together with affiliates, had average gross revenues for the preceding three years of \$3 million or less; and (2) entities that, together with affiliates, had average gross revenues for the preceding three years of \$15 million or less. Entities having average gross revenues of less than \$3 million qualified for a 15 percent bidding credit and were allowed to pay 90 percent of their net bids in quarterly installment payments. 47 C.F.R. §§ 90.810, 90.812 (1995); *id.* § 1.2110. Based on the information it reported in its FCC Form 175, Comtec qualified as a small business having average gross revenues of less than \$3 million for the preceding three years. Consequently, it received a 15 percent bidding credit and participated in the installment payment program.

³⁰ Letter from Fred B. Campbell, Jr., Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Bonnie Arthur, Esq., Hunton & Williams, dated April 18, 2007.

³¹ 47 C.F.R. § 1.925.

to assess Comtec's qualifications to be a Commission licensee.

14. Pursuant to Section 310(d) of the Act and Section 1.948 of the Commission's rules, authorizations in the 900 MHz SMR service may be assigned by the licensee to another party, or the control of a licensee holding such an authorization may be transferred, only with Commission approval.³² As discussed above, the ownership structure Comtec reported in its FCC Form 602 in September 2006 is different from the ownership structure it reported in its FCC Form 175 in 1995. The Commission did not, however, approve a transfer of control of the Licenses, nor did Comtec file an application seeking such approval. Therefore, if the ownership information Comtec submitted in its short-form application was correct and its FCC Form 602 is also correct, the only reasonable conclusion we may draw is that, in violation of the Act and the Commission's rules, Comtec transferred control of the Licenses without Commission authorization.³³

15. Another possible explanation of the difference in ownership information between Comtec's short-form application and its September 2006 FCC Form 602 is that Comtec submitted incorrect information in its short-form application in order to qualify for the designated entity benefits available to eligible applicants in Auction No. 7, i.e., installment payments and bidding credits. Under the Commission's rules, an applicant is eligible for designated entity status if it meets the applicable limits on gross revenues that are established as part of the rules for each service. At the time Comtec applied to participate in Auction No. 7, the Commission determined whether an applicant met these limits by aggregating the gross revenues of the applicant, its affiliates, and persons or entities holding interests in the applicant and their affiliates.³⁴ Therefore, an applicant seeking status as a small business in Auction No. 7 was required to disclose on its short-form application the identities of all such parties and the applicant's gross revenues in accordance with the Commission's method of computation.³⁵ If Comtec did not report its real parties in interest on its short-form application, one reasonable inference is that it failed to do so because the revenues of such parties would have caused it to exceed the revenue limits for designated entity status and would have thereby made it ineligible for installment payments and bidding

³² 47 U.S.C. § 310(d); 47 C.F.R. § 1.948.

³³ We also note that pursuant to Section 1.2111(a) of the Commission's rules, an applicant seeking approval of a transfer of control or assignment of a license within three years of receiving the license through competitive bidding must file with the Commission the associated contracts for sale, option agreements, management agreements, or other documents disclosing the consideration that the applicant would receive in return for the transfer or assignment of its license. 47 C.F.R. § 1.2111(a) (1997). Therefore, if indeed Comtec effected a transfer of control of the Licenses prior to their cancellation, it violated not only Section 310(d) of the Act and Section 1.948 of the Commission's rules but also Section 1.2111(a), as it did not comply with the reporting requirements of that section. In addition, if the revenues of the party or parties to whom the Licenses were transferred caused Comtec to be ineligible for the installment payment plan in which it participated and the bidding credit it received, Comtec also violated the unjust enrichment provisions of Section 1.2111. Under the unjust enrichment provisions that governed licensees utilizing installment financing prior to the cancellation of the Licenses, if Comtec had sought to assign or transfer control of any of the Licenses to an entity not meeting the eligibility standards for installment payments, Comtec would have been required to make full payment of the remaining unpaid principal as a condition of approval of the assignment or transfer. 47 C.F.R. § 1.2111(c)(1) (1997). If Comtec had proposed to assign or transfer any of the Licenses to an entity that did not meet the eligibility criteria for the bidding credit Comtec had received, Comtec would have been required to repay the bidding credit to the Commission with interest as a condition of approval of the assignment or transfer. 47 C.F.R. § 1.2111(d) (1997).

³⁴ 47 C.F.R. § 90.814(b)(2) (1995).

³⁵ 47 C.F.R. § 90.815(a) (1995).

credits.

16. Section 1.17 of the Commission's rules prohibits misrepresentations and lack of candor in Commission filings.³⁶ Misrepresentations are false statements of fact made with an intent to deceive, while lack of candor involves concealment, evasion, and other failures to be fully informative accompanied by deceptive intent.³⁷ The Commission may disqualify a license applicant or revoke the license of a licensee that makes misrepresentations or lacks candor in dealing with the agency.³⁸ Applicants' and licensees' truthfulness and candor before the Commission, as well as their compliance with its rules, are paramount concerns in determining whether they should acquire licenses or continue to hold existing authorizations. As the D.C. Circuit Court of Appeals has stated:

[A]pplicants before the FCC are held to a high standard of candor and forthrightness. The Commission must license [thousands of] stations in the public interest, and therefore relies heavily on the completeness and accuracy of the submissions made to it. . . . Thus, "applicants . . . have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate."³⁹

We also note that the Commission has made clear in its Character Policy Statement that misrepresentations and lack of candor before the Commission are serious breaches of trust that may demonstrate that a party does not have the requisite character qualifications to be a Commission licensee.⁴⁰

³⁶ 47 C.F.R. § 1.17.

³⁷ Fox River Broadcasting, Inc., *Order*, 93 F.C.C. 2d 127, 129 ¶ 6 (1983).

³⁸ *Contemporary Media, Inc. v. FCC*, 214 F.3d 187, 196 (D.C. Cir. 2000). See also Section 312(a)(2) of the Act, which provides that the Commission may revoke any license for false statements knowingly made either in the application or in any statement of fact that may be required pursuant to Section 308; because of conditions coming to the attention of the Commission that would warrant it in refusing to grant a license application; or for willful or repeated violation of, or willful or repeated failure to observe any provision of the Act or any rule or regulation of the Commission. 47 U.S.C. § 312(a).

³⁹ *WHW Enterprises, Inc. v. FCC*, 753 F.2d 1132, 1139 (D.C. Cir. 1985) (citing *RKO General, Inc. v. FCC*, 670 F.2d 215, 232 (D.C. Cir. 1981), *cert. denied*, 456 U.S. 927 (1982); *Nick J. Chaconas*, 28 F.C.C.2d 231, 233 (1971)).

⁴⁰ See Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Rules of Broadcast Practice and Procedure Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Permittees and Licensees, *Report, Order and Policy Statement*, 102 F.C.C.2d 1179, 1210-11 ¶¶ 60-61 (1986), *Memorandum Opinion and Order*, 1 FCC Rcd 421 (1986) ("Character Policy Statement"). See also Policy Regarding Character Qualifications in Broadcast Licensing, Amendment of Part 1, the Rules of Practice and Procedure, Relating to Written Responses to Commission Inquiries and the Making of Misrepresentations to the Commission by Applicants, Permittees, and Licensees, and the Reporting of Information Regarding Character Qualifications, *Policy Statement and Order*, 5 FCC Rcd 3252 (1990), *Memorandum Opinion and Order*, 6 FCC Rcd 3448 (1991), *Memorandum Opinion and Order*, 7 FCC Rcd 6564 (1992) ("1990 Character Policy Statement"). The Commission applies its broadcast character standards to applicants and licensees in the other radio services. See, e.g., 1990 Character Policy Statement, 5 FCC Rcd at 3253 ¶ 10 (adopting 47 C.F.R. § 1.17 to apply prohibition against misrepresentations and material omissions to applicants, licensees, and permittees in all radio services); Ronald Brasher, *Decision*, 19 FCC Rcd 18,462 (2004) (affirming Administrative Law Judge's Initial Decision revoking, denying, or dismissing licensees' private land mobile radio licenses and applications based on the licensees' misrepresentations and lack of candor, unauthorized transfers of control, and abuse of process).
(continued....)

17. The evidence before us indicates that Comtec may have omitted or misrepresented facts material to its ownership and its eligibility for designated entity status, and thereby lacked candor before the Commission, by failing to disclose its real parties in interest in its short-form application for Auction No. 7. By disregarding the Bureau's LOI, Comtec has also failed to inform the Commission of the facts necessary for us to determine the ownership of the company and whether a transfer of control has occurred. In addition, because Comtec has not responded to our inquiry, it has prevented us from ascertaining the identity of the real parties to the Waiver Request. In short, Comtec has failed to inform the Commission of the facts it needs to fulfill its statutory mandate to assign and regulate spectrum licenses in the public interest.

18. It is possible that the ownership information Comtec reported in its short-form application was correct, that Comtec did not transfer control of the Licenses, and that the ownership information in the FCC Form 602 filed in September 2006 was wrong. However, Comtec has neither filed any corrections to this FCC Form 602 nor responded to the LOI in which we sought an explanation of the inconsistencies between the FCC Form 602 and Comtec's short-form application for Auction No. 7. If these inconsistencies were the result of inadvertent error, it would have been a simple matter for Comtec to have responded to our LOI and to have explained the facts. Because it has not done so, we find that it is reasonable to infer that the discrepancies in the ownership information submitted to the Commission are evidence of either an unauthorized transfer of control of the Licenses or a misrepresentation of Comtec's ownership on its short-form application, or both. Given the seriousness of such possible rule violations, and in the absence of sufficient factual information, we cannot consider the merits of any request for a waiver of the automatic cancellation of the Licenses and therefore deny the Waiver Request. Moreover, we reserve our right to seek enforcement action with respect to Comtec's failure to respond to our LOI and other possible rule violations as they relate to the Licenses and to any other Commission licenses that Comtec may hold.

19. The Waiver Request states that SkyTec "has been serving over 10,000 subscribers."⁴¹ To the extent Comtec continued operating on the Licenses after their automatic cancellation on December 2, 1997, it did so without Commission authorization and therefore in violation of the Commission's rules.⁴² Comtec did not seek an STA for the Licenses until August 12, 2003.⁴³ Nevertheless, the Commission is committed to avoiding unnecessary disruptions in service to the public, and the Bureau has the authority to grant STAs to allow former licensees to continue providing service after licenses cancel or terminate.⁴⁴ Indeed, we have granted STAs to parties whose licenses have canceled automatically.⁴⁵

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⁴¹ Waiver Request at 3.

⁴² See 47 C.F.R. §§ 1.903(a), 1.931(a).

⁴³ See *supra* note 4.

⁴⁴ 47 C.F.R. § 1.931(a); Pinpoint Wireless, Inc., Request for a Waiver and Extension of the Broadband PCS Construction Requirements, *Order*, 18 FCC Rcd 1904, 1910 ¶¶ 12-13 (WTB/Comm.Wir.Div. 2003) (denying waiver and extension of construction deadlines and *sua sponte* granting STA).

⁴⁵ See, e.g., In Re Southeast Telephone Inc., Request for Special Temporary Authority to Operate Facilities in the Williamson, West Virginia-Pikeville, Kentucky Basic Trading Area, *Order*, 15 FCC Rcd 15,702 (WTB/Comm.Wir.Div. 2000) (granting STA following automatic license cancellation for failure to make timely installment payments).

20. In the event Comtec has continued to serve customers since the automatic cancellation of the Licenses, we grant Comtec an STA for 180 days from the release of this Order. In keeping with the requirements the Commission has imposed in similar circumstances, Comtec shall, within five days of the release of this Order, provide written notice to each of its current subscribers (with a copy of such notice forwarded to the Commission) that it is not a licensee for the Licenses; that it is authorized to provide service only under a grant of special temporary authority for 180 days from the release of this Order; and that subscribers must make arrangements with another carrier to obtain continued service at the end of this 180-day period ("STA Period"). After the expiration of the STA Period, Comtec will not be authorized to provide further service on the Licenses and shall cease any and all operations on the spectrum that had been assigned under the Licenses. Further, Comtec shall notify the Commission of its cessation of operations and shall provide the date upon which its operations ceased, which in no event may be later than 180 days from the release of this Order. Finally, under the limited authority granted, Comtec is not permitted to solicit or add new subscribers in any of the market areas of the Licenses.

IV. CONCLUSION

21. We conclude that, given Comtec's failure to respond to the Bureau's LOI, to explain its ownership structure, and to explain the evidence in the record that it may have committed serious violations of the Act and the Commission's rules, Comtec's qualifications to be a Commission licensee are in serious doubt. Because Comtec has not provided us with adequate information regarding these matters, we are unable to consider a request for a waiver of the automatic cancellation rule and reinstatement of the Licenses and we therefore deny the Waiver Request. We dismiss as moot Comtec's applications for renewal of the Licenses and its requests for waiver of the requirement of filing renewal applications electronically. To the extent Comtec is providing service using the Licenses, we grant it an STA for 180 days from the release of this Order consistent with the terms and conditions described above.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that the request filed on behalf of Comtec Communications, Inc., d/b/a SkyTec P.R., Inc., on April 9, 2003, seeking waiver of the Commission's rules governing installment payment deadlines and reinstatement of the Licenses, is DENIED.

23. IT IS FURTHER ORDERED that the applications for renewal of the Licenses, FCC File Nos. 0002690264, 0002690265, and 0002690266, and the request for waiver of the requirement of filing license renewal applications electronically, filed on behalf of Comtec Communications, Inc., on July 14, 2006, are DISMISSED AS MOOT.

24. IT IS FURTHER ORDERED that the request for Special Temporary Authority to continue operating on the Licenses, filed on behalf of Comtec Communications, Inc., d/b/a SkyTrackers, Inc., on August 12, 2003, is GRANTED subject to the terms and conditions set forth herein.

25. This action is taken pursuant to sections 4(i) and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 309(j), and sections 1.925 and 1.2110(g)(4) of the Commission's rules, 47 C.F.R. §§ 1.925 and 1.2110(g)(4), under authority delegated pursuant to section 0.331 of the Commission's rules, 47 C.F.R. § 0.331.

FEDERAL COMMUNICATIONS COMMISSION

James D. Schlichting
Deputy Chief, Wireless Telecommunications Bureau